

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MARYBELLE CLINE, et al.,	:	
	:	
Plaintiffs,	:	Case No. 2:17-cv-221
	:	
v.	:	Judge Marbley
	:	
UNITED STATES OF AMERICA,	:	Magistrate Judge Deavers
et al.,	:	
	:	
Defendants.	:	

AGREED ORDER

This is a medical malpractice action in which Plaintiffs Marybelle and James Cline allege that Robert H. Edwards, M.D., negligently performed a hysterectomy on Marybelle Cline that caused subsequent injuries and necessitated further extensive surgery. (Compl. ¶¶ 5–8, ECF No. 2.) Plaintiffs originally filed their action in the Jefferson County Court of Common Pleas on August 30, 2016. The state court entered a default judgment on January 23, 2017.

The United States Attorney's Office first learned about this action on March 9, 2017. On March 16, 2017, the U.S. Attorney for the Southern District of Ohio certified that Defendant Dr. Edwards was deemed to be an employee of the Public Health Service for purposes of 42 U.S.C. § 233(a) at the time of the alleged incident out of which the action of Plaintiffs Marybelle Cline and James Cline arose against Dr. Edwards. (*U.S. Attorney's Certification of Scope of Employment*, ECF No. 1-4.) On the next day, the United States removed the action to this Court. (ECF No. 1-1.)

Based upon the U.S. Attorney's Certification of Scope of Employment and 28 U.S.C. § 233(c), the action is therefore "deemed a tort action brought against the United States" under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671–2680. As such, the Plaintiffs' exclusive remedy is an action against the United States under the Federal Tort Claims Act. Therefore, the state court entry of default judgment is **SET ASIDE** for good cause under Fed. R. Civ. P. 55(c).

Under the Federal Tort Claims Act, a Plaintiff must exhaust administrative remedies prior to filing suit. 28 U.S.C. § 2675(a). Plaintiffs timely filed an administrative tort claim on February 23, 2017, with the appropriate federal agency, the United States Department of Health and Human Services. To date the Department of Health and Human Services has not issued a final determination on that claim. As a result, Plaintiffs have not yet exhausted administrative remedies and this Court lacks subject matter jurisdiction. Therefore, this action is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1).

IT IS SO ORDERED.

DATED: March 27, 2017


Judge Algenon L. Marbley
United States District Court.

(Counsel signatures follow)

Agreed to by:

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